

On June 2, 2014 appellant, then a 49-year-old special agent, filed an occupational disease claim (Form CA-2) alleging that he developed chronic lymphocytic leukemia (CLL) as a result of being enveloped in a cloud of toxic dust as he hid in an archway of a building following the collapse of the South Tower of the World Trade Center in New York City, New York, due to a terrorist attack on September 11, 2001. In a May 29, 2015 merit decision, OWCP denied his claim, finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's medical condition and the accepted factors of his federal employment. In an appeal request form received on May 17, 2016, appellant requested reconsideration. He did not submit any additional evidence. In a nonmerit decision dated June 22, 2016, OWCP denied appellant's request for reconsideration, finding that it neither raised substantive legal questions nor included new and relevant evidence. In a letter received on September 22, 2016, appellant requested reconsideration and submitted a September 14, 2006 medical report from Dr. Bruce A. Cohen, an employing establishment medical officer specializing in occupational medicine and family practice. In this report, Dr. Cohen found that

appellant had CLL due to the accepted employment factors. In a November 29, 2016 nonmerit decision, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that this case is not in posture for decision. Section 8124(a) of the Federal Employees' Compensation Act provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹ Its regulations also provide that the decision shall contain findings of fact and a statement of reasons.² The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.³

In its November 29, 2016 decision, OWCP did not discharge its responsibility to provide appellant a statement explaining the disposition so that appellant could understand the basis for the decision as well as the precise defect and the evidence needed to overcome the denial of his claim. The Board notes that OWCP denied appellant's September 22, 2016 request for reconsideration because it was untimely filed, but failed to provide any discussion of the evidence he submitted in support of his reconsideration request and failed to explain how the evidence of record failed to demonstrate clear evidence of error.

Accordingly, the case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for reconsideration on the denial of his occupational disease claim or why he is not entitled to further reconsideration. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

¹ 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

² 20 C.F.R. § 10.126; *see also O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-0956 (issued April 15, 2010).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(b) (October 2011) (if the evidence submitted is not sufficient to require a merit review, OWCP should issue a decision which discusses the evidence submitted, or lack thereof, and explicitly state the basis for the finding of insufficiency). *See also Robert M. Pace*, 46 ECAB 551 (1995) (in determining whether clear evidence of error is shown, a brief evaluation of the evidence should be included in the decision so that any subsequent reviewer will be able to address the issue of discretion).

IT IS HEREBY ORDERED THAT the November 29, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: September 6, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board